

104TH CONGRESS
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H. R. 3682

To allow certain individuals seeking part-time employment to be eligible to receive unemployment compensation, to require the Secretary of Labor to establish and carry out an annual survey relating to temporary workers, to protect part-time and temporary workers relating to pension and group health plans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 1996

Mrs. SCHROEDER introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Economic and Educational Opportunities, Government Reform and Oversight, and National Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To allow certain individuals seeking part-time employment to be eligible to receive unemployment compensation, to require the Secretary of Labor to establish and carry out an annual survey relating to temporary workers, to protect part-time and temporary workers relating to pension and group health plans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Part-Time and Tem-
3 porary Workers Protection Act of 1996”.

4 **TITLE I—PROTECTION OF PART-**
5 **TIME AND TEMPORARY**
6 **WORKERS**

7 **SEC. 101. ELIGIBILITY FOR UNEMPLOYMENT COMPENSA-**
8 **TION OF CERTAIN INDIVIDUALS SEEKING**
9 **PART-TIME EMPLOYMENT.**

10 (a) GENERAL RULE.—Subsection (a) of section 3304
11 of the Internal Revenue Code of 1986 (relating to require-
12 ments for approval of State unemployment compensation
13 laws) is amended by striking “and” at the end of para-
14 graph (18), by redesignating paragraph (19) as paragraph
15 (20), and by inserting after paragraph (18) the following
16 new paragraph:

17 “(19) in applying the State law provisions relat-
18 ing to availability for work, active search for work,
19 or refusal to accept work, the term ‘suitable work’
20 shall not include any work where the individual
21 would normally perform services for more hours per
22 week than the number of hours per week for which
23 the individual normally performed services in the in-
24 dividual’s last job in the base period, and”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall take effect on the date of the enact-
3 ment of this Act.

4 **SEC. 102. ANNUAL BUREAU OF LABOR STATISTICS SURVEY**
5 **RELATING TO TEMPORARY WORKERS.**

6 The Secretary of Labor, acting through the Commis-
7 sioner of the Bureau of Labor Statistics, shall establish
8 and carry out an annual survey identifying—

9 (1) the characteristics of temporary workers in
10 the United States;

11 (2) the relationship between such workers and
12 the establishments at which such workers are tempo-
13 rarily employed; and

14 (3) where appropriate, the relationship between
15 such workers and their permanent employers.

16 **SEC. 103. PROTECTION OF PART-TIME AND TEMPORARY**
17 **WORKERS.**

18 (a) TREATMENT OF EMPLOYEES WORKING AT LESS
19 THAN FULL-TIME UNDER PARTICIPATION, VESTING, AND
20 ACCRUAL RULES GOVERNING PENSION PLANS.—

21 (1) PARTICIPATION RULES.—

22 (A) IN GENERAL.—Section 202(a)(3) of
23 the Employee Retirement Income Security Act
24 of 1974 (29 U.S.C. 1052(a)(3)) is amended by

1 adding at the end the following new subpara-
2 graph:

3 “(E)(i) For purposes of this paragraph, in the case
4 of any employee who, as of the beginning of the 12-month
5 period referred to in subparagraph (A)—

6 “(I) has customarily completed 500 or more
7 hours of service per year but less than 1,000 hours
8 of service per year, or

9 “(II) is employed in a type of position in which
10 employment customarily constitutes 500 or more
11 hours of service per year but less than 1,000 hours
12 of service per year,
13 completion of 500 hours of service within such 12-month
14 period shall be treated as completion of 1,000 hours of
15 service.

16 “(ii) For purposes of this subparagraph, the extent
17 to which employment in any type of position customarily
18 constitutes less than 1,000 hours of service per year shall
19 be determined with respect to each pension plan in accord-
20 ance with such regulations as the Secretary may prescribe
21 providing for consideration of facts and circumstances pe-
22 culiar to the work-force constituting the participants in
23 such plan.”.

24 (B) CONFORMING AMENDMENT.—Section
25 204(b)(1)(E) of such Act (29 U.S.C.

1 1054(b)(1)(E)) is amended by striking “section
2 202(a)(3)(A)” and inserting “subparagraphs
3 (A) and (E) of section 202(a)(3)”.

4 (2) VESTING RULES.—

5 (A) IN GENERAL.—Section 203(b)(2) of
6 such Act (29 U.S.C. 1053(b)(2)) is amended by
7 adding at the end the following new subpara-
8 graph:

9 “(E)(i) For purposes of this paragraph, in the case
10 of any employee who, as of the beginning of the period
11 designated by the plan pursuant to subparagraph (A)—

12 “(I) has customarily completed 500 or more
13 hours of service per year but less than 1,000 hours
14 of service per year, or

15 “(II) is employed in a type of position in which
16 employment customarily constitutes 500 or more
17 hours of service per year but less than 1,000 hours
18 of service per year,

19 completion of 500 hours of service within such period shall
20 be treated as completion of 1,000 hours of service.

21 “(ii) For purposes of this subparagraph, the extent
22 to which employment in any type of position customarily
23 constitutes less than 1,000 hours of service per year shall
24 be determined with respect to each pension plan in accord-
25 ance with such regulations as the Secretary may prescribe

1 providing for consideration of facts and circumstances pe-
2 culiar to the work-force constituting the participants in
3 such plan.”.

4 (B) 1-YEAR BREAKS IN SERVICE.—Section
5 203(b)(3) of such Act (29 U.S.C. 1053(b)(3))
6 is amended by adding at the end the following
7 new subparagraph:

8 “(F)(i) For purposes of this paragraph, in the case
9 of any employee who, as of the beginning of the period
10 designated by the plan pursuant to subparagraph (A)—

11 “(I) has customarily completed 500 or more
12 hours of service per year but less than 1,000 hours
13 of service per year, or

14 “(II) is employed in a type of position in which
15 employment customarily constitutes 500 or more
16 hours of service per year but less than 1,000 hours
17 of service per year,

18 completion of 250 hours of service within such period shall
19 be treated as completion of 500 hours of service.

20 “(ii) For purposes of this subparagraph, the extent
21 to which employment in any type of position customarily
22 constitutes less than 1,000 hours of service per year shall
23 be determined with respect to each pension plan in accord-
24 ance with such regulations as the Secretary may prescribe
25 providing for consideration of facts and circumstances pe-

1 culiar to the work-force constituting the participants in
2 such plan.”.

3 (3) ACCRUAL RULES.—Section 204(b)(4)(C) of
4 such Act (29 U.S.C. 1054(b)(4)(C)) is amended—

5 (A) by inserting “(i)” after “(C)”; and

6 (B) by adding at the end the following new
7 clauses:

8 “(ii) For purposes of this subparagraph, in the case
9 of any employee who, as of the beginning of the period
10 designated by the plan pursuant to clause (i)—

11 “(I) has customarily completed 500 or more
12 hours of service per year but less than 1,000 hours
13 of service per year, or

14 “(II) is employed in a type of position in which
15 employment customarily constitutes 500 or more
16 hours of service per year but less than 1,000 hours
17 of service per year,

18 completion of 500 hours of service within such period shall
19 be treated as completion of 1,000 hours of service.

20 “(iii) For purposes of clause (ii), the extent to which
21 employment in any type of position customarily constitutes
22 less than 1,000 hours of service per year shall be deter-
23 mined with respect to each pension plan in accordance
24 with such regulations as the Secretary may prescribe pro-
25 viding for consideration of facts and circumstances pecu-

1 liar to the work-force constituting the participants in such
 2 plan.”.

3 (b) TREATMENT OF EMPLOYEES WORKING AT LESS
 4 THAN FULL-TIME UNDER GROUP HEALTH PLANS.

5 (1) IN GENERAL.—Part 2 of subtitle B of title
 6 I of such Act is amended—

7 (A) by redesignating section 211 (29
 8 U.S.C. 1061) as section 212; and

9 (B) by inserting after section 210 (29
 10 U.S.C. 1060) the following new section:

11 “TREATMENT OF PART-TIME WORKERS UNDER GROUP
 12 HEALTH PLANS

13 “SEC. 211. (a) IN GENERAL.—A reduction in the em-
 14 ployer-provided premium under a group health plan with
 15 respect to any employee for any period of coverage solely
 16 because the employee’s customary employment is less than
 17 full-time may be provided under such plan only if the em-
 18 ployee is described in subsection (b) and only to the extent
 19 permitted under subsection (c).

20 “(b) REDUCTIONS APPLICABLE TO EMPLOYEES
 21 WORKING LESS THAN FULL-TIME.—

22 “(1) IN GENERAL.—An employee is described in
 23 this subsection if such employee, as of the beginning
 24 of the period of coverage referred to in subsection
 25 (a)—

1 “(A) has customarily completed less than
2 30 hours of service per week, or

3 “(B) is employed in a type of position in
4 which employment customarily constitutes less
5 than 30 hours of service per week.

6 “(2) REGULATIONS.—For purposes of para-
7 graph (1), whether employment in any type of posi-
8 tion customarily constitutes less than 30 hours of
9 service per week shall be determined with respect to
10 each group health plan in accordance with such reg-
11 ulations as the Secretary may prescribe providing
12 for consideration of facts and circumstances peculiar
13 to the work force constituting the participants in
14 such plan.

15 “(c) AMOUNT OF PERMISSIBLE REDUCTION.—The
16 employer-provided premium under a group health plan
17 with respect to any employee for any period of coverage,
18 after the reduction permitted under subsection (a), shall
19 not be less than a ratable portion of the employer-provided
20 premium which would be provided under such plan for
21 such period of coverage with respect to an employee who
22 completes 30 hours of service per week.

23 “(d) DEFINITIONS.—For purposes of this section—

1 “(1) GROUP HEALTH PLAN.—The term ‘group
2 health plan’ has the meaning provided such term in
3 section 607(1).

4 “(2) EMPLOYER-PROVIDED PREMIUM.—

5 “(A) IN GENERAL.—The term ‘employer-
6 provided premium’ under a plan for any period
7 of coverage means the portion of the applicable
8 premium under the plan for such period of cov-
9 erage which is attributable under the plan to
10 employer contributions.

11 “(B) APPLICABLE PREMIUM.—For pur-
12 poses of subparagraph (A), in determining the
13 applicable premium of a group health plan,
14 principles similar to the principles applicable
15 under section 604 shall apply.”.

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 201(1) of such Act (29 U.S.C.
18 1051(1)) is amended by inserting “, except with
19 respect to section 211” before the semicolon.

20 (B) The table of contents in section 1 of
21 such Act is amended by striking the item relat-
22 ing to section 211 and inserting the following
23 new items:

“Sec. 211. Treatment of part-time workers under group health plans.

“Sec. 212. Effective date.”.

1 (c) EXPANSION OF DEFINITION OF EMPLOYEE TO
2 INCLUDE CERTAIN INDIVIDUALS WHOSE SERVICES ARE
3 LEASED OR CONTRACTED FOR.—Paragraph (6) of section
4 3 of such Act (29 U.S.C. 1002(6)) is amended—

5 (1) by inserting “(A)” after “(6)”; and

6 (2) by adding at the end the following new sub-
7 paragraph:

8 “(B) Such term includes, with respect to any em-
9 ployer, any person who is not an employee (within the
10 meaning of subparagraph (A)) of such employer and who
11 provides services to such employer, if—

12 “(i) such person has (pursuant to an agreement
13 with such employer or any other person) performed
14 such services for such employer (or for such em-
15 ployer and related persons (within the meaning of
16 section 144(a)(3) of the Internal Revenue Code of
17 1986)) for a period of at least 1 year (6 months in
18 the case of core health benefits) at the rate of at
19 least 500 hours of service per year, and

20 “(ii) such services are of a type historically per-
21 formed, in the business field of the employer, by em-
22 ployees (within the meaning of subparagraph (A)).”.

23 (d) EFFECTIVE DATES.—

24 (1) IN GENERAL.—Except as provided in para-
25 graph (2), the amendments made by this section

1 shall apply with respect to plan years beginning on
2 or after January 1, 1997.

3 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
4 GAINED PLANS.—In the case of a plan maintained
5 pursuant to 1 or more collective bargaining agree-
6 ments between employee representatives and 1 or
7 more employers ratified on or before the date of the
8 enactment of this Act, paragraph (1) shall be ap-
9 plied to benefits pursuant to, and individuals covered
10 by, any such agreement by substituting for “Janu-
11 ary 1, 1997” the date of the commencement of the
12 first plan year beginning on or after the earlier of—

13 (A) the later of—

14 (i) January 1, 1997, or

15 (ii) the date on which the last of such
16 collective bargaining agreements termi-
17 nates (determined without regard to any
18 extension thereof after the date of the en-
19 actment of this Act), or

20 (B) January 1, 1999.

21 (3) PLAN AMENDMENTS.—If any amendment
22 made by this section requires an amendment to any
23 plan, such plan amendment shall not be required to
24 be made before the first plan year beginning on or
25 after January 1, 1998, if—

1 (A) during the period after such amend-
2 ment made by this section takes effect and be-
3 fore such first plan year, the plan is operated
4 in accordance with the requirements of such
5 amendment made by this section, and

6 (B) such plan amendment applies retro-
7 actively to the period after such amendment
8 made by this section takes effect and such first
9 plan year.

10 A plan shall not be treated as failing to provide defi-
11 nitely determinable benefits or contributions, or to
12 be operated in accordance with the provisions of the
13 plan, merely because it operates in accordance with
14 this paragraph.

15 **TITLE II—MISCLASSIFICATION**
16 **OF EMPLOYEES AS INDE-**
17 **PENDENT CONTRACTORS**

18 **SEC. 201. INTERNAL REVENUE SERVICE PROCEDURES.**

19 (a) WAIVER OF EMPLOYMENT TAX LIABILITY FOR
20 REASONABLE GOOD FAITH MISCLASSIFICATION BASED
21 ON COMMON LAW RULES.—Section 3509 of the Internal
22 Revenue Code of 1986 (relating to determination of em-
23 ployer's liability for certain employment taxes) is amended
24 by adding at the end the following new subsection:

1 “(e) WAIVER OF EMPLOYMENT TAX LIABILITY FOR
2 REASONABLE GOOD FAITH MISCLASSIFICATION BASED
3 ON COMMON LAW RULES.—

4 “(1) IN GENERAL.—For purposes of determin-
5 ing the liability of any taxpayer for employment
6 taxes with respect to any individual for any period,
7 such individual shall be deemed not to have been an
8 employee of the taxpayer for such period if—

9 “(A) the taxpayer did not treat such indi-
10 vidual as an employee for purposes of the em-
11 ployment taxes for such period,

12 “(B) the taxpayer’s treatment of such indi-
13 vidual as not being an employee was based on
14 a reasonable good faith misapplication of the
15 common law rules used for determining the em-
16 ployer-employee relationship,

17 “(C) all Federal tax returns (including in-
18 formation returns) required to be filed by the
19 taxpayer with respect to such individual for
20 such period were filed on a basis consistent with
21 the taxpayer’s treatment of such individual as
22 not being an employee,

23 “(D) the taxpayer (and any predecessor)
24 did not treat any other individual holding a
25 substantially similar position as an employee for

1 purposes of the employment taxes for any pe-
2 riod beginning after December 31, 1977, and

3 “(E) the taxpayer enters into a closing
4 agreement under section 7121 with the Sec-
5 retary (in the time and manner determined by
6 the Secretary) agreeing to treat such individual,
7 and any other individual holding a substantially
8 similar position, as employees and to file all
9 Federal employment tax returns with respect to
10 such individuals on a basis consistent with the
11 taxpayer’s treatment of such individuals as em-
12 ployees.

13 “(2) DEFINITIONS AND SPECIAL RULES.—

14 “(A) EMPLOYMENT TAX.—For purposes of
15 this subsection, the term ‘employment tax’
16 means any tax imposed by subtitle C, including
17 any interest, penalty, or additional amount with
18 respect to such tax.

19 “(B) NO REFUND OR CREDIT OF OVERPAY-
20 MENT.—No refund or credit of any overpay-
21 ment of an employment tax resulting from the
22 application of paragraph (1) shall be allowed,
23 notwithstanding that the period for filing a
24 claim for refund or credit of such overpayment

1 is not barred on the effective date of this sub-
 2 section.”

3 (b) MODIFICATIONS TO SAFE HARBOR FOR CLASSI-
 4 FICATIONS OF INDIVIDUALS AS NONEMPLOYEES.—

5 (1) REQUIREMENT OF REASONABLE BASIS.—

6 Paragraph (1) of section 530(a) of the Revenue Act
 7 of 1978 (relating to controversies involving whether
 8 individuals are employees for purposes of the em-
 9 ployment taxes) is amended by striking “unless the
 10 taxpayer had no reasonable basis” and inserting the
 11 following: “if the taxpayer had a reasonable basis”.

12 (2) REPEAL OF PRIOR AUDIT AS REASONABLE
 13 BASIS, ETC.—Paragraph (2) of section 530(a) of the
 14 Revenue Act of 1978 is amended—

15 (A) by striking the paragraph caption and
 16 inserting the following: “REASONABLE BASIS
 17 FOR NOT TREATING INDIVIDUAL AS EM-
 18 PLOYEE.—”,

19 (B) in the matter preceding subparagraph
 20 (A)—

21 (i) by striking “in any case”, and

22 (ii) by inserting “only” before “if the
 23 taxpayer’s”,

24 (C) by adding “or” at the end of subpara-
 25 graph (A), and

1 (D) by striking subparagraph (B) and by
2 redesignating subparagraph (C) as subpara-
3 graph (B).

4 (c) AUTHORITY FOR REGULATIONS AND RULINGS ON
5 EMPLOYMENT STATUS.—Section 530 of the Revenue Act
6 of 1978 is amended by striking subsection (b) and by re-
7 designating subsections (c) and (d) as subsections (b) and
8 (c), respectively.

9 (d) EFFECTIVE DATES.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall take effect beginning on the date
12 which is 120 days after the date of the enactment
13 of this Act.

14 (2) MODIFICATIONS TO SAFE HARBOR.—The
15 amendments made by subsection (b) shall apply to
16 periods ending on or after the date which is 120
17 days after the date of the enactment of this Act.

18 **SEC. 202. FEDERAL CONTRACTS.**

19 (a) CLASSIFICATION OF PERSONS AS EMPLOYEES
20 AND INDEPENDENT CONTRACTORS UNDER CERTAIN
21 PROCUREMENT CONTRACTS.—(1) Title III of the Federal
22 Property and Administrative Services Act of 1949 (41
23 U.S.C. 251 et seq.) is amended by adding at the end the
24 following new section:

1 **“SEC. 317. CLASSIFICATION OF PERSONS AS EMPLOYEES**
2 **AND INDEPENDENT CONTRACTORS.**

3 “(a) INELIGIBILITY FOR GOVERNMENT CONTRACTS
4 AND SUBCONTRACTS.—(1) A person (including any sub-
5 sidiary, successor, or related entity of a person) shall not
6 be eligible for a contract during the 2-year period begin-
7 ning on the date of the issuance of any final determination
8 under Federal law that the person (including any subsidi-
9 ary or related entity of the person) willfully misclassified
10 an individual for purposes of any employment tax.

11 “(2) For purposes of this subsection, a determination
12 is final if all rights to appeal the determination, or to re-
13 quest a review, rehearing, or redetermination of the mat-
14 ter that is the subject of the determination, have been ex-
15 hausted or have lapsed.

16 “(b) CERTIFICATION OF ADEQUACY OF BIDS TO PAY
17 EMPLOYMENT TAXES.—A person who submits a bid or
18 proposal for a contract shall certify that the amount of
19 the bid or proposal is adequate to pay all employment
20 taxes with respect to all work to be performed under the
21 contract by employees of the person.

22 “(c) NOTIFICATION OF INDEPENDENT CONTRAC-
23 TORS.—Each contract shall include a requirement that the
24 contractor provide, to each person who performs work
25 under the contract and who is treated by the contractor

1 as an independent contractor for purposes of employment
2 taxes, a notification regarding—

3 “(1) all obligations of the independent contrac-
4 tor under Federal and State law to withhold and pay
5 employment taxes with respect to work performed
6 under the contract by the independent contractor
7 (including work performed by employees of the inde-
8 pendent contractor); and

9 “(2) all statutory rights and protections that
10 are available under Federal and State law to em-
11 ployees of the contractor and are not available to the
12 independent contractor (including employees of the
13 independent contractor), including rights and protec-
14 tions under the Fair Labor Standards Act of 1938,
15 the Occupational Safety and Health Act of 1978,
16 and title VII of the Civil Rights Act of 1964.

17 “(d) RIGHT OF ACTION.—A person who submits a
18 bid or proposal for a contract and who suffers damages
19 as a result of the award of the contract to a person who
20 knowingly and willfully submits a certification under sub-
21 section (b) with respect to the contract that is false, may
22 bring an action for damages against the person awarded
23 the contract in any district court of the United States in
24 which the defendant is located.

25 “(e) DEFINITIONS.—As used in this section:

1 “(1) The term ‘employment tax’ means any tax
2 imposed by subtitle C of the Internal Revenue Code
3 of 1986.

4 “(2) The term ‘contract’ means a contract that
5 is entered into by an executive agency under this
6 title, and all subcontracts under such a contract.

7 “(3) The term ‘misclassify’ means to treat as
8 an independent contractor an individual who is an
9 employee.”.

10 (2) The table of contents in section 1 of the Federal
11 Property and Administrative Services Act of 1949 is
12 amended by inserting after the item relating to the last
13 section in title III the following new item:

 “Sec. 317. Classification of persons as employees and independent contractors.”.

14 (b) APPLICABILITY.—Section 317 of the Federal
15 Property and Administrative Services Act of 1949, as
16 added by subsection (a), shall apply to—

17 (1) contracts entered into under title III of
18 such Act after the expiration of the 180-day period
19 beginning on the date of the enactment of this Act;

20 (2) subcontracts under contracts covered by
21 paragraph (1); and

22 (3) options exercised under any such contract
23 after the expiration of the 180-day period beginning
24 on the date of the enactment of this Act.

1 **SEC. 203. DEFENSE CONTRACTS.**

2 (a) CLASSIFICATION OF PERSONS AS EMPLOYEES
3 AND INDEPENDENT CONTRACTORS UNDER DEFENSE
4 CONTRACTS.—(1) Chapter 141 of title 10, United States
5 Code, is amended by inserting after section 2393 the fol-
6 lowing new section:

7 **“§ 2393a. Classification of persons as employees and**
8 **independent contractors**

9 “(a) INELIGIBILITY FOR DEFENSE CONTRACTS AND
10 SUBCONTRACTS.—(1) A person (including any subsidiary,
11 successor, or related entity of a person) shall not be eligi-
12 ble for a contract during the 2-year period beginning on
13 the date of the issuance of any final determination under
14 Federal law that the person (including any subsidiary or
15 related entity of the person) willfully misclassified an indi-
16 vidual for purposes of any employment tax.

17 “(2) For purposes of this subsection, a determination
18 is final if all rights to appeal the determination, or to re-
19 quest a review, rehearing, or redetermination of the mat-
20 ter that is the subject of the determination, have been ex-
21 hausted or have lapsed.

22 “(b) CERTIFICATION OF ADEQUACY OF BIDS TO PAY
23 EMPLOYMENT TAXES.—A person who submits a bid or
24 proposal for a contract shall certify that the amount of
25 the bid or proposal is adequate to pay all employment

1 taxes with respect to all work to be performed under the
2 contract by employees of the person.

3 “(c) NOTIFICATION OF INDEPENDENT CONTRAC-
4 TORS.—Each contract shall include a requirement that the
5 contractor shall provide, to each person who performs
6 work under the contract and who is treated by the contrac-
7 tor as an independent contractor for purposes of employ-
8 ment taxes, a notification regarding—

9 “(1) all obligations of the independent contrac-
10 tor under Federal and State law to withhold and pay
11 employment taxes with respect to work performed
12 under the contract by the independent contractor
13 (including work performed by employees of the inde-
14 pendent contractor); and

15 “(2) all statutory rights and protections that
16 are available under Federal and State law to em-
17 ployees of the contractor and are not available to the
18 independent contractor (including employees of the
19 independent contractor), including rights and protec-
20 tions under the Fair Labor Standards Act of 1938,
21 the Occupational Safety and Health Act of 1978,
22 and title VII of the Civil Rights Act of 1964.

23 “(d) RIGHT OF ACTION.—A person who submits a
24 bid or proposal for a contract and who suffers damages
25 as a result of the award of the contract to a person who

1 knowingly and willfully submits a certification under sub-
2 section (b) with respect to the contract that is false, may
3 bring an action for damages against the person awarded
4 the contract in any district court of the United States in
5 which the defendant is located.

6 “(e) APPLICABILITY.—This section applies to con-
7 tracts entered into under chapter 137 of this title.

8 “(f) DEFINITIONS.—In this section:

9 “(1) The term ‘employment tax’ means any tax
10 imposed by subtitle C of the Internal Revenue Code
11 of 1986.

12 “(2) The term ‘contract’ includes subcontracts.

13 “(3) The term ‘misclassify’ means to treat as
14 an independent contractor an individual who is an
15 employee.”.

16 (2) The table of sections at the beginning of such
17 chapter is amended by inserting after the item relating
18 to section 2393 the following new item:

“2393a. Classification of persons as employees and independent contractors.”.

19 (b) APPLICABILITY.—Section 2393a of title 10, Unit-
20 ed States Code, as added by subsection (a), shall apply
21 to—

22 (1) contracts entered into under chapter 137 of
23 title 10, United States Code, after the expiration of
24 the 180-day period beginning on the date of the en-
25 actment of this Act;

- 1 (2) subcontracts under contracts covered by
2 paragraph (1); and
3 (3) options exercised under any such contract
4 after the expiration of the 180-day period beginning
5 on the date of the enactment of this Act.

